

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES D. FOX,
Plaintiff.

v.

KIM HOLLAND,
Defendant.

Case No. 15-cv-02134-NC

ORDER TO SHOW CAUSE

Petitioner James Fox, a state prisoner incarcerated at California Correctional Institution in Tehachapi, California, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

I. BACKGROUND

Petitioner pled nolo contendere in the Superior Court of the State of California. On or about August 3, 2010, he was sentenced to 6 years in state prison. Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which on March 25, 2015, denied review of a petition allegedly raising the same claims raised here.

II. DISCUSSION

A. Legal Standard

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in

1 custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C.
2 § 2254(a). It shall “award the writ or issue an order directing the respondent to show cause
3 why the writ should not be granted, unless it appears from the application that the applicant
4 or person detained is not entitled thereto.” 28 U.S.C. § 2243. Summary dismissal is
5 appropriate only where the allegations in the petition are vague or conclusory, palpably
6 incredible, or patently frivolous or false. *See Hendricks v. Vasquez*, 908 F.2d 490, 491
7 (9th Cir. 1990).

8 **B. Petitioner’s Legal Claims**

9 Petitioner seeks federal habeas corpus relief by raising the following claims (1)
10 ineffective assistance of counsel, and (2) the felony charges were time barred. Liberally
11 construed, the claims appear colorable under 28 U.S.C. § 2254 and merit an answer from
12 respondent.

13 **III. CONCLUSION**

14 For the foregoing reasons and for good cause shown:

- 15 1. The clerk shall serve by certified mail a copy of this order and the
16 petition and all attachments thereto upon respondent. The clerk shall also
17 serve a copy of this order on petitioner.
- 18 2. Respondent shall file with the court and serve on petitioner, within 60
19 days of the date of this order, an answer showing why a writ of habeas
20 corpus should not be issued (or -an answer conforming in all respects to
21 Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a
22 writ of habeas corpus should not be issued). Respondent shall file with
23 the answer and serve on petitioner a copy of all portions of the
24 administrative record that are relevant to a determination of the issues
25 presented by the petition.
- 26 3. If the petitioner wishes to respond to the answer, he shall do so by filing a
27 traverse with the court and serving it on respondent within 30 days of his
28 receipt of the answer.

4. Respondent shall file a consent or declination to magistrate judge jurisdiction within 14 days of this order.

IT IS SO ORDERED.

Dated: August 28, 2015



NATHANAEL M. COUSINS
United States Magistrate Judge